

806 KAR 49:030. Captive insurer reporting requirements.

RELATES TO: KRS 304.49-010-304.49-230

STATUTORY AUTHORITY: KRS 304.2-110, 304.49-070(2), 304.49-140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 provides that the Commissioner of Insurance may promulgate administrative regulations necessary for or as an aid to the effectuation of any provisions of the Kentucky Insurance Code. KRS 304.49-140 authorizes the Commissioner of Insurance to establish and amend administrative regulations related to captive insurance companies as necessary to effectuate the provisions of KRS 304.49-010 to 304.49-230. KRS 304.49-070(2) requires the Commissioner of Insurance to promulgate administrative regulations concerning the reporting requirements of captive insurers. This administrative regulation establishes financial and reporting requirements for captive insurers.

Section 1. Definition. "Company" means the captive insurer.

Section 2. A consortium captive insurer, and a pure or industrial insured captive insurer engaged in insurance in Kentucky shall annually submit to the commissioner a report of its financial condition, verified by oath of two (2) of its executive officers on the Annual Statement Convention Blank. The report shall be filed in the same format and content as required by KRS 304.2-205 and 304.3-240.

Section 3. (1) A captive insurer shall have an annual audit by an independent certified public accountant, authorized by the commissioner, and shall file an audited financial report with the commissioner on or before July 1 for the year ending December 31 immediately preceding.

(2) The annual audit report shall be considered part of the company's annual report of financial condition except with respect to the date by which it shall be filed with the commissioner.

(3) The annual audit shall consist of the following:

(a) Opinion of independent certified public accountant.

1. Financial statements furnished pursuant to this section shall be examined by an independent certified public accountant in accordance with generally-accepted auditing standards as determined by the American Institute of Certified Public Accountants.

2. The opinion of the independent certified public accountant shall cover all years presented.

3. The opinion shall:

a. Be addressed to the company on stationery of the accountant showing the address of issuance;

b. Bear original manual signatures; and

c. Be dated.

(b) Report of evaluation of internal controls.

1. This report shall include an evaluation of the internal controls of the company relating to the methods and procedures used in the securing of assets and the reliability of the financial records, including the controls as the system of authorization and approval, and the separation of duties.

2. The review shall be conducted in accordance with generally accepted auditing standards and the report filed with the commissioner.

(c) Accountant's letter. The accountant shall furnish the company, for inclusion in the filing of the audited annual report, a letter stating:

1. That he is independent with respect to the company and conforms to the standards of his profession as contained in the Code of Professional Ethics and pronouncements of the Ameri-

can Institute of Certified Public Accountants and pronouncements of the Financial Accounting Standards Board;

2. The general background and experience of the staff engaged in audit including the experience in auditing captives or other insurance companies;

3. That the accountant understands that the audited annual report and his opinions thereon will be filed in compliance with this administrative regulation with the Kentucky Department of Insurance;

4. That the accountant consents to the requirements of Section 6 of this administrative regulation and that the accountant consents and agrees to make available for review by the commissioner, his designee or his appointed agent, the work papers as defined in Section 6 of this administrative regulation;

5. That the accountant is properly licensed by an appropriate state licensing authority; and

6. That the accountant is a member in good standing in the American Institute of Certified Public Accountants.

(d) Financial statements. The following statements are required:

1. Balance sheet;

2. Statement of gain or loss from operations;

3. Statement of changes in financial position;

4. Statement of changes in capital paid up, gross paid in and contributed surplus and unassigned funds or unassigned surplus; and

5. Notes to financial statements. The notes to financial statements shall be those required by generally accepted accounting principles, and shall include:

a. A reconciliation of differences, if any, between the audited financial report and the statement or form filed with the commissioner;

b. A summary of ownership and relationship of the company and all affiliated corporations or companies insured by the captive; and

c. A narrative explanation of all material transactions and balances with the company.

(e) Certification of loss reserves and loss expense reserves.

1. The annual audit shall include an opinion as to the adequacy of the company's loss reserves and loss expense reserves.

2. The individual who certifies as to the adequacy of reserves shall be approved by the commissioner and shall be:

a. A Fellow of the Casualty Actuarial Society;

b. A member in good standing of the American Academy of Actuaries; or

c. An individual who has demonstrated his competence in loss reserve evaluation to the commissioner.

3. Certification shall be in the form as the commissioner deems appropriate.

(f) A filing fee for audited financial statements shall be as prescribed by 806 KAR 4:010.

Section 4. A company shall within ninety (90) days report to the commissioner in writing, the name and address of the independent certified public accountant retained to conduct the annual audit established in this administrative regulation.

Section 5. A company shall require the certified public accountant to immediately notify, in writing, an officer and all members of the board of directors of the company of any determination by the independent certified public accountant that the company has materially misstated its financial condition in its report to the commissioner as required in KRS 304.49-070. The company shall furnish the notification to the commissioner within five (5) working days of receipt.

Section 6. Work Papers. (1) Each company shall require the independent certified public accountant to make available for review and inspection by the commissioner or his appointed agent the work papers prepared in the conduct of the audit of the company.

(2) The company shall require that the accountant retain the audit work papers for a period of not less than five (5) years after the period reported upon.

(3) Any review by the commissioner shall be considered a part of an examination or investigation and all working papers obtained during the course of an examination or investigation shall be confidential.

(4) The company shall require that the independent certified public accountant provide photocopies of any of the working papers the Department of Insurance requests and the working papers may be retained by the department.

(5) Work papers shall include:

(a) Schedules;

(b) Analyses;

(c) Reconciliations;

(d) Abstracts;

(e) Memoranda;

(f) Narratives;

(g) Flow charts;

(h) Copies of company records; or

(i) Other documents prepared or obtained by the accountant and his employees in the conduct of their examination of the company.

Section 7. (1) If the commissioner deems that the financial condition of the company warrants additional security, he may require a company to deposit with the Treasurer of this state, cash or securities approved by the commissioner or, to furnish the commissioner a clean irrevocable letter of credit issued by a bank chartered by the State of Kentucky or a member bank of the Federal Reserve System and approved by the commissioner.

(2) The company may receive interest or dividends from the deposit or exchange the deposits for others of equal value with the approval of the commissioner.

(3) If the company discontinues business, the commissioner shall return the deposit only after being satisfied that all obligations of the company have been discharged. (27 Ky.R. 2010; 3252; eff. 6-8-2001; TAm eff. 8-9-2007; Crt eff. 2-26-2020; 47 Ky.R. 409, 974; eff. 2-2-2021.)